

Appl. No. 10/785,432
Atty. Docket No. CM2600C
Amdt. dated 12/6/04
Reply to Office Action of 10/27/04
Customer No. 27752

REMARKS

Claim Status

Claims 1-10 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102(b) Over Cavadini, et al.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cavadini, et al (U.S. Patent No. 5,968,569). The Office Action states that Cavadini discloses a chewable composition that comprises a chewable base and a probiotic agent. The Office Action states that the reference is silent to the particular percentage of chewable base; however, the Office Action states that it is inherent in the disclosure of Cavadini. Thus, the Office Action concludes that Cavadini renders the Claims anticipated.

The controlling case law regarding anticipation under 35 U.S.C. § 102, as summarized in MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegaal Bros. V. Union Oil Co. of California*, 814 F. 2d. 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1989). "The identical invention must be shown in as complete detail as is contained in the...claim" *Richardson v. Suzuki Motor Co.*, 868 F. 2d 1226, 1236 9 USPQ 2d 1913, 1920 (Fed. Cir 1989).

The Applicants respectfully submit that Cavadini does not teach each and every element in Claim 1 and thus, does not anticipate Claim 1. For example, Cavadini does not teach a chewable composition comprising a chewable base, as described in the Applicants' specification. In the specification, the Applicants describe the chewable base of the composition to be a substance that "acts to encourage retention of the composition in the oral cavity for a period of few minutes or more, for example by providing an insoluble mass which does not completely dissolve or disintegrate upon chewing" (See Applicants' specification page 13, lines 24 to 26). The chewable base described by the Applicants' does not dissolve upon chewing like Cavadini's ready-to-eat pet food kibble.